

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING**

7:00P.M., February 20, 2018

**George V. Massey Station, Second Floor Conference Room
516 West Loockerman Street, Dover, DE**

MINUTES

MEMBERS PRESENT Dafne Carnright, Cathy Cowin, Bill Doolittle, Karen Eller, Ann Fisher, Tika Hartsock, Emmanuel Jenkins, Beth Mineo, Bill O'Neill, Robert Overmiller, Jennifer Pulcinella, Deanna Tyree, Laura Waterland.

OTHERS PRESENT: Guests: Sandy Miller, Division of Vocational Rehabilitation (DVR), Dale Matusevich, Department of Education (DOE)

Staff present: Wendy Strauss/ Executive Director, Kathie Cherry/ Office Manager and Sybil Brown/ Administrative Coordinator.

MEMBERS ABSENT: Al Cavalier, Nancy Cordrey, Lisa Gonzon, Bernie Greenfield, Terri Hancharick, Thomas Keeton, Sonya Lawrence, Dana Levy, Karen McGloughlin, Chris McIntyre, Carrie Melchisky, Mary Ann Mieczkowski, Howard Shiber, and Brenné Shepperson.

Chair Dafne Carnright called the meeting to order at 7:05p.m. Dafne announced there was no speaker for the evening so she didn't expect the meeting to be too long. Since there were new members Dafne asked for introductions to be made. Introductions were made around the table. Dafne asked for a motion to approve the agenda. The motion was approved. Dafne asked for a motion to approve the January meeting minutes. The motion was approved. A motion was made to approve the January financial report. The motion was approved. Dafne explained that a nomination committee was needed and she asked for two volunteers. Robert Overmiller and Bill Doolittle volunteered.

Public Comments

There were no public comments.

CHAIR/DIRECTOR REPORT

Wendy shared that our Joint Finance Committee (JFC) meeting went well. Wendy spoke about the LIFE Conference and explained about the centerpieces that she and Sybil made using posters from our poster contest winners this year. Pictures were left over from the centerpiece project and Wendy invited Council members to take the leftover photos. The Heart 2 Heart Hugs campaign distribution took place on February 14, 2018. Wendy shared that over 1100 coats were donated along with about 500 blankets and many other warm items. Students at Holy Cross donated 180 handmade hats. Also 27 students from Lake Forest Central Elementary school attended and donated hundreds of personal

hygiene items. Wendy shared the news story that was published in the Delaware State News newspaper. Wendy went on to say that this will be our last year heading up the project and she would love to turn the project over to someone else to lead. If anyone is interested please let her know. Letters were sent to each school district and charter to inquire about the status of their parent councils. Only nine have responded so far. A couple of the areas of issue that were reported as barriers to participation are transportation as well as time. Staff will continue to get the others to respond before the final analysis is released. Wendy discussed the original musical “*BOUNDLESS!*” that the GACEC is working on with individuals with disabilities and their allies. George Tilson, who Wendy is familiar with is writing the original script. Auditions dates and times were announced. Dover auditions will take place on March 6 and 8 at Central Middle School from 5:30-8 and New Castle County auditions will take place on March 20 and 22nd at the Delaware School for the Deaf in Newark also from 5:30-8pm. Wendy shared that she and staff visited the Network School for Employability Skills. The school is like a mini vo-tech for individuals with disabilities. Cathy Cowin shared that it is in Christina school district and she is aware of it. The school has about 11 different businesses that interact with the community, including catering and floral arranging. Wendy shared that visiting was a great experience. She was impressed with the school and the work it is doing for our students.

DOE REPORT

There was no DOE Report this evening.

COMMITTEE REPORTS

INFANT AND EARLY CHILDHOOD

Ann reported that the committee would like to request the current Child Development Watch policy manual. There was no speaker for the committee this month.

ADULT TRANSITION SERVICES

Cathy shared that Dale Matusevich from DOE came to speak to the committee about transition indicators 1, 2, 13 and 14. This is the same report that Dale will be sharing with the full Council next month so Cathy felt she should not share anything about the presentation. The committee viewed the PowerPoint provided by Dale and gave feedback. He will present the revised PowerPoint to the full Council. Cathy did share that she feels like there have been vast improvements in the transition process during her nine years as the transition specialist for the Christina district.

CHILDREN AND YOUTH

Bill reported that the committee has three action items for the Council. The first is to write a letter to the group that created the supported decision making webpage and thank them for getting it up and

running and offer two suggestions: first, that they include Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA) forms to the site and second that they broaden the areas that are indicated in their guidance, because primarily it appears to be medical in focus. The second item is to request from DOE an update on IEP Plus as it is way behind schedule. The third item from the committee is to request from DOE a report of general education classrooms by percentage with more than 25 percent combined IDEA and 504 students by school and district. Bill reported that the committee also discussed that 18-21 year old students are not getting their full range of services.

POLICY AND LAW

Beth Mineo reported that the group reviewed the recommendations from the legal memo issued on February 7th as well as an additional memo issued on February 8th. The committee agreed to adopt all of the recommendations in the memos. A **motion** to take action on the discussed items from the committee was **approved with one opposed**.

Commentary on the regulations discussed in committee or approved by the Board was as follows:

DMMA Amending Fair Hearing Regulation DSSM 5304.3[21 DE Reg. 606 (February 1, 2018)]

The Division of Medicaid and Medicare Assistance (DMMA) proposes to amend the Delaware Social Services Manual (DSSM) 5304.3, with the stated goal of aligning DMMA Medicaid Managed Care policy with the new federal requirements found in the Centers for Medicare and Medicaid Services (CMS) Medicaid Managed Care Final Rule.

As background, historically a recipient of Medicaid services enrolled in managed care who wished to challenge an adverse decision could file for an internal appeal with the managed care organization (MCO) and independently file for a state fair hearing with an independent hearing officer who is not in the employ of the MCO. The recipient did not have use these processes in any order and could choose one over the other, or do both. There was no requirement that the recipient “exhaust” the internal appeal process before going forward with a state fair hearing. CMS extensively revised the Medicaid Managed Care regulations. One significant change is that the regulations now require a recipient of Medicaid Managed care services to exhaust the MCO appeal process before they can file for a state fair hearing.

This particular amendment to §5304.3 makes it clear that a recipient can request a state fair hearing only after they have received a notice from the MCO of an appeal resolution that remains adverse, or when the MCO has failed to adhere to the notice and timing requirements associated with the internal appeal process found in 42 CFR §438.408. This means that generally speaking a state fair hearing can only be requested upon receipt of an adverse appeal decision from the MCO, unless the MCO has not followed notice requirements or handled the appeal within the appropriate time frame. This change reflects the changes made necessary by CMS.

The second change to 5304.3 adds language that “the rules do not prevent the MCO from

“offering...one level of appeal” prior to the state fair hearing. This amendment is problematic. Existing language allows for the MCO to offer conciliation services. It is unclear, even with regard to conciliation services; 1.) that a recipient can decline such an offer; 2.) that the MCO cannot delay the issuance of their decision in the appeal while they make this offer or engage in conciliation; and 3.) that these processes do not act as a stay on the fair hearing process. These issues would all have to be further clarified in the regulation, provided conciliation is actually allowed by the regulations. There is a provision in the new regulations for obtaining an External Medical Review (42 CFR 438.402 (c) (B) which is instructive. This regulation does clarify that the process is at the option of the enrollee and does not delay or otherwise impact the timing of the appeal or the right to file a state fair hearing request. It is worth noting that we did not find any authority for allowing an MCO to offer conciliation in the regulations.

More troublesome is the prohibition in the federal regulation regarding multiple levels of appeal. The proposed language appears to suggest that the MCO can offer an additional level of appeal after they have issued an appeal resolution upholding an adverse benefit determination. That is the only way to read the language in context with the rest of the section. However, 42 CFR 438.402 (b) very clearly states that an MCO can only have one level of appeal for enrollees. Moreover, even in the context of offering conciliation if that is permissible under the regulations, it must be made plain that the service is voluntary and cannot delay the fair hearing process.

The final change relates to adding language that clarifies that expedited review can extend to both physical and mental conditions and changes the time that the MCO must issue a decision to 72 hours, not 3 working days, making clear that decisions may be have to rendered over weekends and holidays if necessary. This change is beneficial and Council should consider endorsing.

The change to the language in 5304.3 that allows the MCO to offer “one level of appeal” after issuing a decision on an appeal appears to violate the regulation and Council should consider asking that it be withdrawn, and that the regulation be further amended to make clear that conciliation services are voluntary and do not impact the appeal and/or fair hearing procedures.

DMMA Amending CHIP regulations [21 DE Reg. 608 (February 1, 2018)].

In this proposed change, DMMA states that its purpose is to align Children’s Health Insurance Program (CHIP) regulations with the Mental Health Parity and Addiction Equity Act (MHPAEA) and the Patient Protection and Affordable Care Act (ACA). The changes seek to ensure that coverage for mental health and substance abuse disorders is no more restrictive than coverage for medical/surgical conditions. These changes appear to be compatible with the requirements of the federal statutes and guidance from CMS and Council probably does not need to take any action on them.

House Bill 305. This bill amends 16 Del. Code §4751B by removing juvenile adjudications from the list of “prior qualifying Title 16 convictions” that can lead to vastly increased sentences for subsequent drug offenses as an adult. Judges can continue to use juvenile sentences as a factor in adult sentences, but the juvenile convictions will no longer automatically trigger enhanced penalties.

House Bill 306. Currently, every person over the age of 15 who is in possession of a firearm during

the commission of a Class B felony must be tried as an adult in the adult court system. House Bill 306 seeks to amend 11 Del. Code §1447A by leaving the decision to try a minor as an adult under these circumstances to the judge and also raises the age to over 16. Superior Court could choose under the proposed revision to send a case back to Family Court. It is worth noting that this discretion was given back to Superior Court last year for other felonies that were previously non-discretionary. (House Bill 9).

House Bill 307. This bill repeals 10 Del. Code §1009 and 11 Del Code §1448 to remove all mandatory minimum sentencing schemes for juveniles adjudicated delinquent in Family Court.

House Bill 308. This bill removed the sunset provision in House Bill 405 of the 148th General Assembly to allow the continuation of a program allowing the issuance of civil citations to juveniles who have committed minor misdemeanors as an alternative to arrest and the introduction into the criminal justice system. This bill has already passed both houses and is awaiting signature.

Senate Bill 146. This bill seeks to amend 10 Del. Code §1017 to require the mandatory expungement of felony cases that were terminated in favor of the child.

All of these bills are efforts to have the criminal code allow judges more discretion in crafting appropriate sentences for juvenile offenders. The philosophy underpinning the proposed changes is the recognition that juveniles should not be viewed as, and treated like, adults in the criminal justice system. The bills also reflect the understanding that juveniles are not yet fully developed and do not have the same ability to control impulses and make good decisions that we expect from adults.

There are a myriad of reasons why it is good public policy to enable juvenile offenders to stay in the Family Court and juvenile justice system. Exposing juveniles to adult jails is dangerous and undermines rehabilitation efforts. The adult corrections system will not address the underlying issues that may have led to the offender's criminal behavior, setting the juvenile offender up for a lifetime of criminal behavior when targeted treatment may lead to a better outcome. These measures will also help to address the disproportionate representation of minority children and children with disabilities in the correctional system by diverting young offenders to treatment or other more appropriate settings. The Council may wish to consider endorsing these bills as advancing a more nuanced approach to juvenile justice in Delaware that will lead to better long term outcomes.

House Bill 294. This bill seeks to amend Title 21 to transfer the responsibility for establishing, administering and setting fees for courses of instruction and programs for rehabilitation for individuals who have had their licenses revoked for driving under the influence of drugs or alcohol from the Department of Safety and Homeland Security (DSHS) to the Division of Substance Abuse and Mental Health (DSAMH). Because DSAMH has the expertise to address the rehabilitation needs of individuals with substance abuse issues and is in a better position to provide services that these offenders may need, the Council should consider endorsing this legislation.

PERSONNEL COMMITTEE

The committee had nothing to report.

MEMBERSHIP COMMITTEE

Dafne shared that Al Cavalier has requested a leave of absence. She asked if we were in compliance with all of our required positions being filled on Council. We are in compliance but as always are looking for additional parents. Karen Eller asked to remind everyone that the Children and Youth committee is still looking for student advocates to attend their meetings so if anyone knows of a student who might be interested, please let them know.

AD HOC COMMITTEES

Robert reported that the next meeting of the full School Consolidation Taskforce will be held tomorrow, February 21st at Dickinson High School in New Castle County. He brought up two issues that he heard at Legislative Hall during the budget hearings. First, according to the director of DVR, they are in good shape, despite having vacancies and teachers who are not certified. Also, funding for the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) community services program has been cut in half and no mention was made of this by the Division Director and no Legislators asked any questions about the funding cuts. However they did discuss the need to cut the waiting list time even with a fifty percent budget cut. Laura shared that she has been attending the taskforce for addressing the needs of children with complex medical needs. The group has been meeting weekly as a result of epilogue language. The group is actively looking for parents to participate. She is not entirely sure what the ultimate goal of the committee is. The group began meeting in December and the report is due in May. She will send information about the next meeting to Wendy. Cathy Cowin shared that the Mental Health Ad Hoc committee has met again and she personally met with Dr. Gallucci who is now the Director of a residential psychiatric hospital. Dr. Gallucci was able to put Cathy in contact with someone who could do some research on the process of transitioning from child to adult mental health; however, the person indicated that there was really nothing turning up in research. Cathy feels like the group will need to schedule another meeting in the coming months. Cathy feels that part of the problem is that both of the systems, child and adult mental health, are going through some significant transitions as far as administration is concerned.

Wendy announced that Susan Campbell will be replacing Roseanne Griff Cabelli as the Part C coordinator. Also during the GACEC Joint Finance Committee hearing it was brought to light that there was a recommendation to add money to the Office of Management and Budget (OMB) budget to move the GACEC from the K-12 server to the State Network. This move will allow for smoother operations for staff. Bill O'Neill discussed the data from the suspension and expulsion report. He indicated that the way the data is reported there is no clear picture of what is happening in each school. The aggregation of the data dilutes the figures. He feels that Council should look at the data on a disaggregated level to study what is happening in each school. This data used to be reported every year. He would like Council to request disaggregated data on indicators 4A and B from DOE. He **made a motion** to request the data. The **motion was approved**. Beth invited Council members to attend the Lunch Time Learning Program at the Center for Disabilities Studies at the University of Delaware where a presentation will be offered from students and staff attending the Career and Life Studies Certificate Program at the University.

Dafne announced visitors for the evening and advised members that copies of all letters and responses are available for viewing at the back of the room.

A **motion** was made **to adjourn** the meeting. The **motion** was **approved**. The meeting was adjourned at 8:04 p.m.